1947. **File No.** B. Divorce 47

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Legal Deptt
B **BRANCH**

**Subject:—** A Bill to provide for a right of Divorce among all communities of Hindus in certain circumstances

L.A. Bill XVI of 1947

Bom. Act No XXII of 1947

**File No.** B. Divorce/47

Gen. 194 a.

572-B

Office of the R.L.A.

The requisite revised Bill is sent herewith.

2. Para. 1(d) of Secretary, Home Department's note at page 43. - It is presumed that the period of seven years not only applies to leprosy but also to lunacy. Clause 3 provides accordingly.

3. The subject-matter of the Bill falls under entries 4,6,8,9 and 15 in List III in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not contained any provisions repugnant to the provisions of any earlier Federal law or any existing Indian law on the subject, it does not appear necessary to reserve it for the consideration of the Governor General under section 107(2) of the Government of India Act, 1935.

4. The Statement of ~~Subjects~~ Objects and Reasons at page 51 of the Home Department File 709/5 of 1946, as amended, is in order.

D.V.Vyas,
Remembrancer of Legal Affairs.

U.R. to H.D. No. 1743, dated the 21st February 1947.

4-Cs.

M.V.V.
29/5.

No.4326.
Legal Department,
Bombay Castle, 29th April 1947.

From

P.M.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay,

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to provide for a right of divorce among all communities of Hindus in certian circumstances.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor, an authentic copy of a Bill to provide for a right of divorce among all communities of Hindus in certian circumstances which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 3rd April 1947 and on the 10th April 1947, respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a),(b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 4,6,8,9 and 15 in List III in the Seventh Schedule to the Government of India Act, 1935.

4. As the Bill does not contain any provisions repugnant to the provisions of any earlier Federal law or any existing Indian law on the subject, it is not necessary to reserve it for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement

4-Cs.
M.V.V./29/5.

Contd...../

6. I am also to forward herewith one copy of each of the papers noted in the margin.

| | |
|---|---|
| 1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons. | |
| 2. Report of the Select Committee together with the Bill as amended by the Select Committee. | |
| 3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council. | |
| 4. Bill as read for the third time and passed by the Bombay Legislative Council. | |
| 5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 21st, 22nd and 25th February and 3rd April 1947 and of the Bombay Legislative Council dated the 10th April 1947. | |

I have the honour to be,

Sir,

Your most obedient Servant,

Sd/- P.M.LAD,
29/4/47
Secretary to the Government of B'bay
Legal Department.

Through

The Secretary to the Government of Bombay,

Home Department.

4-Cs.

H.V.V.
29/5.

No. G.S. 1539.
Office of the Governor's Secretary,
Government House,
Bombay, 7th May 1947.

From

D.Symington, Esquire, C.I.E., I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Subject:- The Bombay Hindu Divorce Bill,1947.

Sir,

With reference to your letter No.4326, dated the 29th April 1947, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Bombay Hindy Divorce Bill, 1947.

Your obedient servant,

Sd/-

Secretary to the Governor of Bombay
Bombay.

4-Cs.

N.V.V.
29/5.

Bills.
A Bill to provide for a right of divorce among all communities of Hindus in certain circumstances.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1458.
Bombay Castle, 12th February 1947.

Memorandum from the Home Department, dated the 12th February 1947.- Transferring for necessary action, the papers relating to a Bill to provide for a right of divorce among all communities of Hindus in certain circumstances.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 12th February 1947, as Bill No. XVI of 1947.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette on the 14th February 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd/- K.M.CHITNVIS,
Assistant Remembrancer of Legal Affair

To

The Manager, Government Central Press, Bombay(with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 co ies for the use of the Legal Department).

The Home Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Publicity, Bombay.

With a copy of the Bill and S.O

* With five extra copies of the Bill.

4-Cs.
M.V.V.
29/3.

Acts.

Publication of the Bombay Hindu Divorce Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 4787.
Bombay Castle, 10th May 1947.

Letter to the Secretary to the Governor, No.4326, dated the 29th April 1947.

Letter from the Secretary to the Governor, No.G.S.1539, dated the 7th May 1947:

"With reference to your letter No.4326, dated the 29th April 1947, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Bombay Hindu Divorce Bill, 1947."

RESOLUTION:- The law should be published as Bombay Act No. XXII of 1947 in the Bombay Government Gazette, dated the 12th May 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department with reference to the memorandum from that Department dated the 14th February 1947.

By order of the Governor of Bombay,

Sd/- P.M.LAD,

Secretary to Government.

To,

The Manager, Government Central Press, Bombay(with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Deptt.

The Home Department,
* The Oriental Translator to Government,
The Secretary to the Bombay Legislative Council,
The Secretary to the Bombay Legislative Assembly,
The Director of Publicity, Bombay,

) with a copy of the Act.

With five extra copies of the Act.

4-Ce.

M.V.V.
29/5.

[**To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.**]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

## L. A. BILL No. XVI OF 1947.

*A Bill to provide for a right of divorce among all communities of Hindus in certain circumstances.*

WHEREAS it is expedient to provide for a right of divorce among all communities of Hindus in certain circumstances ; It is hereby enacted as follows :—

~~1. Preliminary.~~

1. (*1*) This Act may be called the Bombay Hindu Divorce Act, 1947. Short title and extent.

(*2*) It extends to the whole of the Province of Bombay.

2. In this Act, unless there is anything repugnant in the subject or context— Definitions.

(*a*) "Court" means in Greater Bombay, the High Court in its ordinary original civil jurisdiction and elsewhere, the Court of a District Judge ;

(*b*) "desert" means to desert without reasonable cause and without the consent or against the will of the spouse ;

(*c*) "Hindu" includes a Sikh, Jain, Budhist, a follower of the Arya or Bramha Samaj or a convert to Hinduism ;

(*d*) "husband" means a Hindu husband ;

(*e*) "marriage" means a marriage between Hindus whether contracted before or after the coming into operation of this Act ;

(*f*) "minor" means a person under 16 years of age ;

(*g*) "wife" means a Hindu wife.

Grounds for divorce.

**3.** (*1*) A husband or wife may sue for divorce on any of the following grounds, namely :—

(*a*) that the defendant was impotent at the time of the marriage and continues to be so at the time of the institution of the suit ;

(*b*) that the defendant has been a lunatic or an idiot for a period of not less than seven years before the institution of the suit ;

(*c*) that the defendant has been suffering from leprosy not contracted from the plaintiff for a period of not less than seven years before the institution of the suit ;

(*d*) that the defendant has deserted the plaintiff for a continuous period of seven years ;

(*e*) that the defendant has not been heard of as being alive for the space of seven years by those persons who would have naturally heard of it had the defendant been alive.

(*2*) A first wife may also sue for divorce on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit. Bom. XXV of 1946.

Suits for judicial separation.

**4.** Notwithstanding anything contained in section 3—

(*1*) any husband or wife may sue for judicial separation on the ground that the spouse is suffering from leprosy not contracted from the plaintiff,

(*2*) a wife may sue for judicial separation on the ground of legal cruelty.

Courts in which suits to be instituted.

**5.** (*1*) Every suit under this Act shall be instituted in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(*2*) Where the defendant shall at such time have left the Province or his whereabouts are unknown such suit shall be instituted in the Court at the place where the plaintiff and defendant last resided together.

(*3*) In any case, whether the defendant resides in the Province or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such court, after recording its reasons, grants leave so to do.

Alimony *pendente lite*.

**6.** In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her the expenses of the suit, and monthly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

Decrees in suit.

**7.** In any suit under section 3 or 4 whether defended or not, if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall decree such relief accordingly.

Permanent alimony.

**8.** (*1*) If the Court thinks fit, it may, at the time of passing any decree under this Act or subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(*2*) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (*1*), it may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

(*3*) If the Court is satisfied that the wife in whose favour an order has been made under sub-section (*1*) or (*2*) has remarried or has not remained chaste, it shall vary or rescind the order.

Payment of alimony to wife or to her trustee.

**9.** In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee if for any reason it shall appear to the Court expedient so to do.

Disposal of joint property.

**10.** In any suit under this Act, the Court may make such provisions in the decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

Suits may be heard with closed doors.

**11.** A suit under this Act shall be tried with closed doors at the instance of either party or if the Court thinks fit.

Provisions of Civil Procedure Code to apply to suits under this Act.

**12.** Save as herein otherwise provided, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to all proceedings instituted under this Act including proceedings in execution and orders subsequent to decree. V of 1908.

Enforcement of and appeal from orders and decrees.

**13.** All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the law for the time being in force :

No appeal as to costs.

Provided that there shall be no appeal on the subject of costs only :

Provided further that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

**14.** When the time for an appeal against any decree granting a divorce shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted and six months have elapsed thereafter but not sooner, it shall be lawful for the parties thereto to marry again, as if the prior marriage has been terminated by death.

Custody of children.

**15.** In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, the marriage of whose parents is the subject of such suit, and may, after the decree upon application, by petition for the purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the suit for obtaining such decree were still pending.

Rules.

**16.** The Provincial Government may by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Saving.

**17.** Nothing contained in this Act shall apply to Hindus marrying under the provisions of the Special Marriage Act, 1872. III of 1872.

## STATEMENT OF OBJECTS AND REASONS.

Divorce, as such, is unknown to the Hindu Law as marriage according to Hindu religion is a sacrament and not a contract. In the lower castes of Hindus, particularly among Sudras, divorce is granted by Courts on the ground of being "a custom" prevailing in a particular community having the force of law.

2. The Hindu Law, however, permits polygamy and the husband was free to take any number of wives till the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was passed.

3. With the lapse of time, the social structure undergoes definite changes and the contact with other countries and other civilisations introduces new modes of life and new habits among the people which make it necessary to change the law to provide for the changes so introduced.

4. It has accordingly become necessary to provide some legal remedy for permitting divorce among Hindus when it becomes obvious that the relations between parties to a marriage are quite unhappy and the only effective remedy is to dissolve the marriage in the interest of the parties and the society in general.

5. It is accordingly proposed to undertake legislation to permit divorce among Hindus on the following grounds :—

(*a*) impotence,

(*b*) desertion or disappearance for 7 years,

(*c*) lunacy or leprosy extending to 7 years,

(*d*) the first wife should be entitled to divorce when her husband had married a second wife, who is living. The second wife or any subsequent wife will not be entitled to divorce from the husband because he had another wife at the time of marriage even though he has concealed the fact of having another wife already.

In the case of leprosy, provision is made for judicial separation if the party so desires.

The Bill has been prepared on the lines of the Indian Divorce Act, 1869, and the Parsi Marriage and Divorce Act, 1936.

(Signed) MORARJI DESAI.

Dated 12th February 1947.

By order of the Governor of Bombay,

K. M. CHITNVIS,
Assistant Remembrancer of Legal Affairs.

Bombay, dated 12th February 1947.

Mom Bk Hb 302—2

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

# L. A. BILL No. XVI OF 1947.

*A Bill to provide for a right of divorce among all communities of Hindus in certain circumstances.*

**(As read for the third time and passed by the Legislative Assembly on the 3rd April 1947.)**

**(As read for the third time and passed by the Legislative Council on the 10th April 1947.)**

WHEREAS it is expedient to provide for a right of divorce among all communities of Hindus in certain circumstances; It is hereby enacted as follows:—

## I *Preliminary.*

Short title and extent.

**1.** (*1*) This Act may be called the Bombay Hindu Divorce Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

**2.** In this Act, unless there is anything repugnant in the subject or context

(*a*) "Court" means in Greater Bombay, the High Court in its ordinary original civil jurisdiction and elsewhere, the Court of a District Judge;

(*b*) "desert" means to desert without reasonable cause and without the consent or against the will of the spouse;

(*c*) "Hindu" includes a Sikh, Jain, Budhist, a follower of the Arya or Bramha Samaj or a convert to Hinduism;

(*d*) "husband" means a Hindu husband;

(*e*) "marriage" means a marriage between Hindus whether contracted before or after the coming into operation of this Act;

(*f*) "wife" means a Hindu wife.

Grounds for divorce.

**3.** (*1*) A husband or wife may sue for divorce on any of the following grounds, namely:—

(*a*) that the defendant was impotent at the time of the marriage and continues to be so at the time of the institution of the suit;

(*b*) that the defendant has been a lunatic for a period of not less than seven years before the institution of the suit or is an idiot;

(*c*) that the defendant has been suffering from leprosy not contracted from the plaintiff for a period of not less than seven years before the institution of the suit;

(*d*) that the defendant has deserted the plaintiff for a continuous period of four years;

(*e*) that the defendant has not been heard of as being alive for the space of seven years by those persons who would have naturally heard of it had the defendant been alive;

(*f*) that the defendant, if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man or leads the life of a prostitute :

Provided that no such suit shall lie, except under clause (*d*) or (*f*), if the husband and wife have lived a married life for 20 years after attaining majority.

(*2*) A wife may also sue for divorce on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit. Bom. XXV of 1946.

Suits for judicial separation.

**4.** Notwithstanding anything contained in section 3—

(*1*) a husband or wife may sue for judicial separation on the ground that the spouse is suffering from leprosy not contracted from the plaintiff,

(*2*) a husband may sue for judicial separation on the ground that his wife is a concubine of any other man or leads the life of a prostitute,

(*3*) a wife may sue for judicial separation—

(*a*) on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit, or Bom. XXV of 1946.

(*b*) on the ground that her husband has any other woman as a concubine, or

(*c*) on the ground of legal cruelty.

Courts in which suits to be instituted.

**5.** (*1*) Every suit under this Act shall be instituted in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(*2*) Where the defendant shall at such time have left the Province or his whereabouts are unknown such suit shall be instituted in the Court at the place where the plaintiff and defendant last resided together.

(*3*) In any case, whether the defendant resides in the Province or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such court, after recording its reasons, grants leave so to do.

Alimony *pendente lite.*

**6.** In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her the expenses of the suit, and monthly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

**7.** In any suit under section 3 or 4 whether defended or not, if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall decree such relief accordingly. Decrees in suit.

**8.** (*1*) If the Court thinks fit, it may, at the time of passing any decree under this Act or subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just. Permanent alimony.

(*2*) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (*1*), it may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

(*3*) If the Court is satisfied that the wife in whose favour an order has been made under sub-section (*1*) or (*2*) has remarried or has not remained chaste, it shall vary or rescind the order.

**9.** In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do. Payment of alimony to wife or to her trustee.

**10.** In any suit under this Act, the Court may make such provisions in the decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife. Disposal of joint property.

**11.** A suit under this Act shall be tried with closed doors at the instance of either party or if the Court thinks fit. Suits may be heard with closed doors.

**12.** Save as herein otherwise provided, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to all proceedings instituted under this Act including proceedings in execution and orders subsequent to decree. Provisions of Civil Procedure Code to apply to suits under this Act.

V of 1908.

Enforcement of and appeal from orders and decrees.

**13.** All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the law for the time being in force:

No appeal as to costs.

Provided that there shall be no appeal on the subject of costs only:

Provided further that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

**14.** When the time for an appeal against any decree granting a divorce shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted and six months have elapsed thereafter but not sooner, it shall be lawful for the parties thereto to marry again, as if the prior marriage had been terminated by death.

Custody of children.

**15.** In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, the marriage of whose parents is the subject of such suit, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the suit for obtaining such decree were still pending.

Rules.

**16.** The Provincial Government may by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Saving.

**17.** Nothing contained in this Act—

(1) shall apply to Hindus marrying under the provisions of the Special Marriage Act, 1872; or III of 1872.

(2) shall affect any right of divorce or judicial separation recognised by custom.

# Government of Bombay

## LEGAL DEPARTMENT.

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## [L. A. BILL No. XVI OF 1947]

(As read for the third time and passed by the Legislative Assembly on the 3rd April 1947.)

(As read for the third time and passed by the Legislative Council on the 10th April 1947.)

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**A Bill to provide for a right of divorce among all communities of Hindus in certain circumstances**

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[Mr. MORARJI DESAI, M.L.A.]

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MO-1 Bk Hb 24—2

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS

Registered No. B-1

# The Bombay Government Gazette

PUBLISHED BY AUTHORITY

MONDAY, 12TH MAY 1947.

Separate paging is given to this Part in order that it may be filed as a separate compilation.


# PART IV

**(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.**

CONTENTS.


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| BOMBAY ACT No. XXII OF 1947—An Act to provide for a right of divorce among all communities of Hindus in certain circumstances ... ... ... ... | 239-242 |


The following Act of the Bombay Legislature having been assented to by the Governor on the 6th May 1947 is hereby published for general information.

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

## BOMBAY ACT No. XXII OF 1947.

*(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 12th May 1947.)*

An Act to provide for a right of divorce among all communities of Hindus in certain circumstances.

WHEREAS it is expedient to provide for a right of divorce among all communities of Hindus in certain circumstances;
It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bombay Hindu Divorce Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) "Court" means in Greater Bombay, the High Court in its ordinary original civil jurisdiction and elsewhere, the Court of a District Judge;

(*b*) "desert" means to desert without reasonable cause and without the consent or against the will of the spouse;

(*c*) "Hindu" includes a Sikh, Jain, Budhist, a follower of the Arya or Bramha Samaj or a convert to Hinduism;

(*d*) "husband" means a Hindu husband;

(*e*) "marriage" means a marriage between Hindus whether contracted before or after the coming into operation of this Act;

(*f*) "wife" means a Hindu wife.

**Grounds for divorce.**

3. (*1*) A husband or wife may sue for divorce on any of the following grounds, namely :—

(*a*) that the defendant was impotent at the time of the marriage and continues to be so at the time of the institution of the suit;

(*b*) that the defendant has been a lunatic for a period of not less than seven years before the institution of the suit or is an idiot;

(*c*) that the defendant has been suffering from leprosy not contracted from the plaintiff for a period of not less than seven years before the institution of the suit;

(*d*) that the defendant has deserted the plaintiff for a continuous period of four years;

(*e*) that the defendant has not been heard of as being alive for the space of seven years by those persons who would have naturally heard of it had the defendant been alive :

(*f*) that the defendant, if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man or leads the life of a prostitute :

Provided that no such suit shall lie, except under clause (*d*) or (*f*), if the husband and wife have lived a married life for 20 years after attaining majority.

(*2*) A wife may also sue for divorce on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit. Bom. XXV of 1946.

**Suits for judicial separation.**

4. Notwithstanding anything contained in section 3—

(*1*) a husband or wife may sue for judicial separation on the ground that the spouse is suffering from leprosy not contracted from the plaintiff,

(*2*) a husband may sue for judicial separation on the ground that his wife is a concubine of any other man or leads the life of a prostitute,

(*3*) a wife may sue for judicial separation—

(*a*) on the ground that her husband had married again before the coming into operation of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, and such wife is living at the time of the institution of the suit, or Bom. XXV of 1946.

(*b*) on the ground that her husband has any other woman as a concubine, or

(*c*) on the ground of legal cruelty.

**Courts in which suits to be instituted.**

5. (*1*) Every suit under this Act shall be instituted in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(*2*) Where the defendant shall at such time have left the Province or his whereabouts are unknown such suit shall be instituted in the Court at the place where the plaintiff and defendant last resided together.

(*3*) In any case, whether the defendant resides in the Province or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where

the plaintiff and the defendant last resided together, if such court, after recording its reasons, grants leave so to do.

Alimony *pendente lite.*

**6.** In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her the expenses of the suit, and monthly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

Decrees in suit.

**7.** In any suit under section 3 or 4 whether defended or not, if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall decree such relief accordingly.

Permanent alimony.

**8.** (*1*) If the Court thinks fit, it may, at the time of passing any decree under this Act or subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(*2*) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (*1*), it may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

(*3*) If the Court is satisfied that the wife in whose favour an order has been made under sub-section (*1*) or (*2*) has remarried or has not remained chaste, it shall vary or rescind the order.

Payment of alimony to wife or to her trustee.

**9.** In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

Disposal of joint property.

**10.** In any suit under this Act, the Court may make such provisions in the decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

Suits may be heard with closed doors.

**11.** A suit under this Act shall be tried with closed doors at the instance of either party or if the Court thinks fit.

Provisions of Civil Procedure Code to apply to suits under this Act.

**12.** Save as herein otherwise provided, the provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to all proceedings instituted under this Act including proceedings in execution and orders subsequent to decree. V of 1908.

Enforcement of and appeal from orders and decrees.

**13.** All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the law for the time being in force:

No appeal as to costs.

Provided that there shall be no appeal on the subject of costs only:

Provided further that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

**14.** When the time for an appeal against any decree granting a divorce shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted and six months have elapsed thereafter but not sooner, it shall be lawful for the parties thereto to marry again, as if the prior marriage had been terminated by death.

Custody of children.

**15.** In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, the marriage of whose parents is the subject of such suit, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the suit for obtaining such decree were still pending.

Rules.

**16.** The Provincial Government may by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Saving.

**17.** Nothing contained in this Act—

(*1*) shall apply to Hindus marrying under the provisions of the Special Marriage Act, 1872; or III of 1872.

(*2*) shall affect any right of divorce or judicial separation recognised by custom.

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